

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

EMERALD WILSON-BEY,

Plaintiff,

v.

CORRECTIONS CORP. AMERICA,
et al.,

Defendants.

Case No. 2:22-cv-00493-ART-BNW

ORDER

Plaintiff Emerald Wilson-Bey brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that she claims she suffered while incarcerated at Nevada Southern Detention Center. (ECF No. 1-1.) On March 24, 2022, this Court ordered Wilson-Bey to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before May 23, 2022. (ECF No. 3.) The Court warned Wilson-Bey that the action could be dismissed if she failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. (*Id.* at 3.) That deadline expired and Wilson-Bey did not file a fully complete application to proceed *in forma pauperis*, pay the full \$402 filing fee, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of

1 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)
2 (dismissal for failure to comply with court order). In determining whether to
3 dismiss an action on one of these grounds, the Court must consider: (1) the
4 public's interest in expeditious resolution of litigation; (2) the Court's need to
5 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
6 favoring disposition of cases on their merits; and (5) the availability of less drastic
7 alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217,
8 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th
9 Cir. 1987)).

10 The first two factors, the public's interest in expeditiously resolving this
11 litigation and the Court's interest in managing its docket, weigh in favor of
12 dismissal of Wilson-Bey's claims. The third factor, risk of prejudice to defendants,
13 also weighs in favor of dismissal because a presumption of injury arises from the
14 occurrence of unreasonable delay in filing a pleading ordered by the court or
15 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.
16 1976). The fourth factor—the public policy favoring disposition of cases on their
17 merits—is greatly outweighed by the factors favoring dismissal.

18 The fifth factor requires the Court to consider whether less drastic
19 alternatives can be used to correct the party's failure that brought about the
20 Court's need to consider dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983,
21 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before*
22 the party has disobeyed a court order does not satisfy this factor); *accord*
23 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that
24 “the persuasive force of” earlier Ninth Circuit cases that “implicitly accepted
25 pursuit of least drastic alternatives prior to disobedience of the court's order as
26 satisfying this element[.]” *i.e.*, like the “initial granting of leave to amend coupled
27 with the warning of dismissal for failure to comply[.]” have been “eroded” by
28 *Yourish*). Courts “need not exhaust every sanction short of dismissal before finally

1 dismissing a case, but must explore possible and meaningful alternatives.”
2 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action
3 cannot realistically proceed until and unless Wilson-Bey either files a fully
4 complete application to proceed *in forma pauperis* or pays the \$402 filing fee for
5 a civil action, the only alternative is to enter a second order setting another
6 deadline. But the reality of repeating an ignored order is that it often only delays
7 the inevitable and squanders the Court’s finite resources. The circumstances here
8 do not indicate that this case will be an exception: there is no hint that Wilson-
9 Bey needs additional time or evidence that she did not receive the Court’s order.
10 Setting another deadline is not a meaningful alternative given these
11 circumstances. So the fifth factor favors dismissal.

12 II. CONCLUSION

13 Having thoroughly considered these dismissal factors, the Court finds that
14 they weigh in favor of dismissal. It is therefore ordered that this action is
15 dismissed without prejudice based on Wilson-Bey’s failure to file a fully complete
16 application to proceed *in forma pauperis* or pay the full \$402 filing fee in
17 compliance with this Court’s March 24, 2022, order. The Clerk of Court is
18 directed to enter judgment accordingly and close this case. No other documents
19 may be filed in this now-closed case. If Wilson-Bey wishes to pursue her claims,
20 she must file a complaint in a new case.

21
22 DATED THIS 9th day of June 2022.



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24 ANNE R. TRAUM
25 UNITED STATES DISTRICT JUDGE
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